



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R3-ES-2022-0145; FXES11140300000-223]

Receipt of an Incidental Take Permit Application for Proposed Habitat

Conservation Plan, Consumers Energy Natural Gas Pipeline Replacement; Five Counties, Michigan; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Consumers Energy for an incidental take permit under the Endangered Species Act. If approved, the permit would authorize the incidental take of a federally threatened species, the eastern massasauga rattlesnake (*Sistrurus catenatus*; EMR). The applicant has prepared a habitat conservation plan in support of their application. We have made a preliminary determination that the HCP and permit application are eligible for categorical exclusion under the National Environmental Policy Act. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Document availability:* Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS-R3-ES-2022-0145 at <https://www.regulations.gov>.

Comment submission: Please specify whether your comment addresses the proposed habitat conservation plan, draft environmental action statement, any combination of the aforementioned documents, or other documents. You may submit

written comments by one of the following methods:

- *Online:* <https://www.regulations.gov>. Search for and submit comments on Docket No. FWS-R3-ES-2022-0145.
- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS-R3-ES-2022-0145; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Carrie Tansy, Deputy Field

Supervisor, Michigan Ecological Services Field Office, by email at carrie_tansy@fws.gov, or telephone at 517–351–8375; or Andrew Horton, Regional HCP Coordinator, Midwest Region, by email at andrew_horton@fws.gov or telephone at 612–713–5337. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Consumers Energy for an incidental take permit under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). If approved, the permit would be for a 15-year period and would authorize the incidental take of a federally threatened species, the eastern massasauga rattlesnake (*Sistrurus catenatus*; EMR). The applicant has prepared a habitat conservation plan (HCP) that describes the actions and measures proposed that would avoid, minimize, and mitigate incidental take of EMR along an approximate 56-mile (mi) construction corridor. We have made a preliminary determination that the HCP and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*).

Background

Section 9 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and its implementing regulations prohibit the “take” of animal species listed as endangered or threatened. “Take” is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct” (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits (ITP) for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant’s Proposed Project

The applicant requests a 15-year ITP to take the federally threatened eastern massasauga rattlesnake. The applicant determined that take is reasonably certain to occur incidental to the construction and maintenance of a 55.8-mi pipeline replacement project, covering approximately 721 acres (ac) of private land, 44 ac of which occur within presumed occupied EMR habitat. The applicant has submitted a HCP in support of their application for an ITP to address take of EMR. The HCP’s area encompasses the counties of Clinton, Livingston, Shiawassee, Ingham, and Washtenaw, located in southern Michigan. The covered activities include the following: surveying and staking, vegetation clearing, grading, stringing and bending of pipe, trenching, backfilling, horizontal directional drilling, hydrostatic testing, habitat restoration, and ongoing pipeline maintenance. The applicant has determined that actions associated with construction and maintenance within the existing 56-mi pipeline corridor have the potential to incidentally take the species.

The proposed conservation strategy in the applicant’s proposed HCP is designed

to avoid, minimize, and mitigate the impacts of the covered activity on EMR. The biological goals and objectives are to conduct the project in a manner that minimizes impacts and maintains persistence of EMR within the HCP area, to restore habitat postconstruction to maintain or improve preexisting habitat quality and function for EMR, and to monitor response of EMR to best management practices (BMPs) and site restoration to inform conservation efforts. The authorized level of take from the project is no more than two individual snakes over the 15-year project duration. To offset the impacts of the taking of snakes, the applicant proposes to restore the site to previous or improved condition and to provide conservation funds for EMR habitat protection and public education.

Our Preliminary Determination

We are requesting comments on our preliminary determination that the applicant's proposal will have a minor or negligible effect on the eastern massasauga and that the plan qualifies as a low-effect HCP as defined by our Habitat Conservation Planning Handbook (December 2016). We base our determinations on three criteria: (1) Implementation of the proposed project as described in the HCP would result in minor or negligible effects on federally listed, proposed, and/or candidate species and their habitats; (2) implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and (3) HCP impacts, considered together with those of other past, present, and reasonably foreseeable future projects, would not result in cumulatively significant effects. In our analysis of these criteria, we have made a preliminary determination that the approval of the HCP and issuance of an ITP qualify for categorical exclusion under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, and 46.215). However, based upon our review of public comments that we receive in

response to this notice, this preliminary determination may be revised.

National Environmental Policy Act

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA. The U.S. Fish and Wildlife Service (Service) has made a preliminary determination that the applicant's project and the proposed mitigation measures would individually and cumulatively have a minor or negligible effect on the covered species and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion, and the HCP would be low effect under our NEPA regulations at 43 CFR 46.205.

Next Steps

The Service will evaluate the permit application and the comments received to determine whether the application meets the requirements of section 10(a) of the ESA. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

Request for Public Comments

The Service invites comments and suggestions from all interested parties during a 30-day public comment period (see **DATES**). In particular, information and comments regarding the following topics are requested:

1. The environmental effects that implementation of any alternative could have on the human environment;
2. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed;
3. Any threats to eastern massasauga that may influence their populations over the life of the ITP that are not addressed in the proposed HCP or Catex

screening form; and

4. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Availability of Public Comments

You may submit comments by one of the methods shown under **ADDRESSES**.

We will post on <https://www.regulations.gov> all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Lori Nordstrom,

Assistant Regional Director,

Ecological Services.